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OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
BEFORE THE COMMISSION

In the matter of
Pacific Gas and Electric Company
Diablo Canyon Nuclear Power Plant
Unit Nos. 1 and 2
Independent Spent Fuel Storage Installation

Docket # 72-26

**SAN LUIS OBISPO MOTHERS FOR PEACE'S
REQUEST TO SUPPLEMENT SUBPART K PRESENTATION
WITH NRC STAFF AFFIDAVIT**

San Luis Obispo Mothers for Peace ("SLOMFP") hereby requests leave to supplement its San Luis Obispo Mothers for Peace's Detailed Summary of Facts, Data, and Arguments on Which It Intends to Rely at Oral Argument to Demonstrate the Inadequacy of the U.S. Nuclear Regulatory Commission's Final Supplement to the Environmental Assessment for the Proposed Diablo Canyon Independent Spent Fuel Storage Installation to Consider the Environmental Impacts of an Attack on the Facility (Contention 2) (April 14, 2008) ("SLOMFP's Summary"), by referencing its reliance on an affidavit recently submitted to this docket by the U.S. Nuclear Regulatory Commission ("NRC" or "Commission") Staff as an attachment to the Staff's Motion for Summary Disposition of Contention 1(b) (April 18, 2008) ("Staff Motion").

In Section V.B.2 of SLOMFP's Summary, SLOMFP cited evidence that in making a finding of no significant impact, the NRC Staff applied a screening criterion contained in a formerly secret agency document – SECY-04-0222, Memorandum from Luis A. Reyes to the Commissioners re: Decision-making Framework for Materials and Research and Test Reactor Vulnerability Assessments (November 24, 2004) ("SECY-04-0222") -- to arbitrarily exclude consideration of attack scenarios that did not result in immediate fatalities.

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In an affidavit submitted by the NRC Staff in support of its motion for summary disposition of Contention 1(b), the Staff has now conceded that it applied the decision-making criterion in SECY-04-0222. In paragraph 7 of the Affidavit of James Randall Hall, Shana Helton, and Paul Kelley, Jr. (April 18, 2008), NRC Staff affiant Shana Helton states that: "[t]he framework assessment methodology outlined in SECY-04-0222 was applied to various categories of NRC licensees and certificate holders, including ISFSIs." In the same paragraph, Ms. Helton also states that while the Staff did not apply many aspects of the methodology outlined in SECY-04-0222, "the staff did refer to the consequence evaluation criteria in SECY-04-0222 (and its enclosures) when developing the set of assumptions used to calculate the estimated dose to the nearest resident to the Diablo Canyon ISFSI."

Ms. Helton's statements confirm that the Staff violated the National Environmental Policy Act ("NEPA"), by arbitrarily applying an irrational – and secret -- screening criterion to exclude consideration of reasonably foreseeable attack scenarios that would cause significant offsite contamination, human illness, and adverse socioeconomic effects. These impacts should have been addressed in detail in an environmental impact statement ("EIS") that also weighed the costs and benefits of an array of measures to prevent or mitigate those effects.

Respectfully submitted,



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April 26, 2008

CERTIFICATE OF SERVICE

I certify that on April 26, 2008, copies of San Luis Obispo Mothers for Peace's Request to Supplement Subpart K Presentation With NRC Staff Affidavit were served on the following persons by e-mail; and that they will be served on the following by first-class mail on April 28, 2008:

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